



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable E. L. Shelton
County Auditor
Johnson County
Cleburne, Texas

Dear Sir:

Opinion No. O-5053-A
Re: Under the facts submitted can
the commissioners' court of
Johnson County amend the budget?

We have your letter of February 16, 1943, requesting the opinion of this department on the above stated question and referring to our opinion No. O-5053. Your letter reads in part as follows:

"I think you are imminently correct in your opinion and I concur with you but this does not yet meet the main point in question. The main question involved is whether or not, under the existing conditions, the Commissioners' Court could amend the budget.

"I hold, and I think your various opinions will bear me out, that the Commissioners Court cannot amend budgets just to satisfy whims or desires without any fundamental background. The salaries attempted to be raised at the regular meeting in January were fully discussed at the public hearing of the budget in August 1943, and two of the officers were present and agreed to leave the salaries at the old rate but when January rolls around they have a change of heart and attempt to raise the salaries in excess of the budget. I am of the opinion, and I think your various opinions will bear me out in this particular, this cannot be legally done. I refer to your Opinion No. O-2617 wherein you specifically recite grave public necessity. There is no grave

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public necessity involved in this instance. I could cite you to others but will not as you know them better than I. The war was on when the budget was made therefore that cannot be claimed as unforeseen and this is the allegation. Again what am I to do with Article No. 1666 of the Revised Civil Statutes. If it is permissible to amend the budget just to carry a point or satisfy a whim this Article had just as well be discarded.

" "

As we understand your request, the commissioners' court of Johnson County has amended the budget of said county to take care of certain increases of salary for certain county officials. It is our further understanding that it is your contention that as there were no provisions contained in the original county budget when it was prepared to take care of any increase in salaries to county officials that the same cannot now be amended.

This department has repeatedly held that the question of "grave public necessity" is a fact question to be determined primarily by the commissioners' court. It is apparent from your letter that your position is that no "grave public necessity" existed at the time the county budget was amended to take care of increase in salaries for certain county officials and therefore the commissioners' court was unauthorized to make such amendment. However, on the other hand it is apparent that the commissioners' court did decide that they were legally authorized to amend the county budget and in fact did amend said budget.

This department has held (Opinion No. 0-2315) that the discretion of the commissioners' court is not absolute authority to expend county funds in the case of an emergency, and is final, only where the question is debatable or where the existence of an emergency is unquestionable. However, said court has no authority to determine and declare that an emergency exists, and expend county funds therefor, where the facts clearly show the contrary. Such court has no legal authority to declare an emergency and evade the law, where in fact, no emergency exists.

Our opinion No. 0-1053 defines the terms "grave" and "public necessity". We enclose a copy of this opinion

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for your convenience. Where the existence of grave public necessity is debatable, the acts of the commissioners' court are controlling. Therefore, as above stated, it is our opinion that whether or not the commissioners' court of Johnson County has the authority to amend the county budget under the facts submitted is a fact question to be determined primarily by the commissioners' court.

Yours very truly

ATTORNEY GENERAL OF TEXAS

RECEIVED
JAN 15 1943
Groves Miller
JAN 15 1943

By *Ardell Williams*
Ardell Williams
Assistant

AW:mp
Encl.

